

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

ANTONIO HAWKINS,

Plaintiff,

v.

CASE No. 7:18cv591

C/O LUNDY, *et al.*

Defendants

ANSWER

COMES NOW C/O Lundy, Colna, and Halsey (“Defendants”), by counsel, to answer the Plaintiff’s Complaint as follows:

FIRST DEFENSE

The Complaint fails to state any claim against upon which relief can be granted.

SECOND DEFENSE

Defendants deny that the claims in the Complaint are cognizable under the First, Eighth and Fourteenth Amendments or any other section or clause of the United States Constitution or any other federal law or regulation.

THIRD DEFENSE

Defendants deny that jurisdiction over the Complaint is conferred upon the Court by either 42 U.S.C. § 1983 or any amendment to the United States Constitution. Further, Defendants specifically deny that the Court has jurisdiction over any claim which might be construed to state a claim under state law.

FOURTH DEFENSE

Defendants deny that Plaintiff has suffered any injury or damage as a result of an act or omission by any of the Defendants.

FIFTH DEFENSE

Defendants deny that Plaintiff has suffered any physical injuries as a result of an act or omission by any of the Defendants and therefore the Plaintiff is not entitled to damages under the Prison Litigation Reform Act.

SIXTH DEFENSE

Defendants are immune from suit based upon the Eleventh Amendment and upon the discharge of their official duties.

SEVENTH DEFENSE

Defendants deny that they are indebted to or liable to Plaintiff in any sum whatsoever.

EIGHTH DEFENSE

To the extent that Plaintiffs have failed to allege any direct involvement on the part of any of the Defendants in any of the acts or omissions complained of, such claims must fail because *respondeat superior* is not available in an action under 42 U.S.C. § 1983.

NINTH DEFENSE

To the extent that this claim alleges negligence on the part of the Defendants, the claim is barred in this Court by the Eleventh Amendment.

TENTH DEFENSE

Plaintiff has failed to exhaust his administrative remedies as to all of his claims against Defendant Colna prior to filing this suit and therefore those claims are barred from review under 42 U.S.C. § 1997e(a).

ELEVENTH DEFENSE

Defendants deny each and every allegation of the Complaint not specifically admitted herein.

TWELFTH DEFENSE

Defendants are entitled to good faith and/or qualified immunity.

THIRTEENTH DEFENSE

As to the specific factual allegations set forth in the Complaint, the Defendants state as follows:

1. Defendants admit that during all relevant times of the Complaint, Hawkins was an inmate at River North Correctional Center (“River North”).
2. Defendants admit that during all relevant times of the Complaint, Defendant Colna was a Lieutenant at River North.
3. Defendants admit that during all relevant times of the Complaint, Defendant Lundy was a Correctional Officer at River North.
4. Defendants admit that during all relevant times of the Complaint, Defendant Halsey was a Correctional Officer at River North.
5. Defendants deny that the Plaintiff has properly exhausted his claim of retaliation against Defendant Colna.
6. Defendants admit that Hawkins was placed in hand and leg restraints and was escorted to the Special Housing Unit on May 23, 2018.
7. Defendants deny that any of them punched, choked, or “slammed” Plaintiff’s head against a wall on May 23, 2018.
8. Defendants deny that any of them used excessive force against the Plaintiff on May 23, 2018.

9. Defendants deny that Plaintiff has a constitutional right to the grievance procedure at River North.

10. Defendants deny each and every allegation not specifically admitted herein.

FOURTEENTH DEFENSE

Defendants will rely on any and all other properly available defenses to the Complaint which may arise from Plaintiffs' prosecution of this action and reserve their right to amend their Answer if at any time they should be so advised.

Respectfully submitted,

C/O LUNDY, ET AL., Defendants

By: s/ Ann-Marie White

Ann-Marie White, AAG, VSB #91166

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following: n/a.

I also hereby certify that I have sent the document, postage prepaid, to the following non-filing user:

Antonio Hawkins, #1182989
Sussex I State Prison

24414 Musselwhite Drive
Waverly, VA 23891-1111

By: /s/Ann-Marie White
Ann-Marie White
Assistant Attorney General